IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-964

MILLARD C. FARMER, JR.,
Petitioner,

v.

ELIE L. HOLTON, JUDGE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

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INDEX

TABLE OF AUTHORITIES

Cases cited:

TABLE OF AUTHORITIES—Continued

Page

Cases cited—Continued:

Authorities cited:

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I.

STATEMENT OF THE CASE

The historical facts and procedural history leading to petitioner's convictions and sentences for contempt of court are fully set forth in the decision of the Court of Appeals of the State of Georgia. *Farmer v. Holton*, 146 Ga. App. 101 (1978). [Petitioner's brief, Appendix A].

II.

REASON FOR NOT GRANTING THE WRIT

PETITIONER'S CONDUCT, IN THE PRESENCE OF THE COURT RESULTING IN CONVICTIONS AND SENTENCES FOR CONTEMPT OF COURT, FALLS WITHIN THE NARROW RANGE OF CONTEMPT CASES WHERE SUMMARY DISPOSITION IS APPROPRIATE, NEGATING DIRECT EVIDENTIARY ANALYSIS IN TERMS OF "REASONABLE DOUBT" OR "PREPONDERANCE OF THE EVIDENCE".

Petitioner argues that this Court should grant certiorari because he was summarily adjudged to be in contempt of court and sentenced on an erroneous standard of proof. Petitioner contends that the convictions were based on a preponderance of the evidence rather than on evidence establishing his guilt beyond a reasonable doubt.

As the record before this Court shows, the conduct of the petitioner which led to his convictions occurred in the presence of the trial court. The respondent respectfully submits that these convictions fall within the narrow range of contempt cases wherein summary disposition is appropriate. In such cases, the contemptuous conduct occurs in open court, in the presence of the court, and all elements of the offense are observed by the judge. There are no questions of fact requiring analysis in terms of standard of proof. Thus, whatever the merit of petitioner's argument regarding convictions for contempt on a preponderance of the evidence, the analysis is inapplicable in the instant case.

The Court of Appeals of Georgia in rendering the opinion herein challenged, stated in part as follows:

> " '[T]he matter is not, strictly speaking, a criminal case, but is only quasi-criminal. It is tried under the rules of civil procedure, rather than under the rules of criminal procedure, and a preponderance of evidence is sufficient to convict the defendant, as against the requirement of removal of any reasonable doubt which prevails in criminal cases.' *Hill v. Bartlett*, 124 Ga. App. 56, 183 S.E. 2d 80, *supra; Renfroe v. State*, 104 Ga. App. 362, 365, 121 S.E. 2d 811 (1961); *Pedigo v. Celanese Corp. of America*, 205 Ga. 392, 54 S.E. 2d 252 (1949), *cert. den.* 338 U.S. 937, 70 S.Ct. 346, 94 L.Ed. 578." *Farmer v. Holton*, *supra* at 108.

In each of the cases above quoted, the conduct resulting in the conviction for contempt occurred outside the presence of the court. The cases did not involve direct summary disposition of conduct arising in the face of the court. Thus, in the instant case, the language above quoted can only be characterized as dictum.

The court below, recognizing the existence of certain cases wherein summary disposition is appropriate, stated in part as follows:

> "If there is any substantial evidence authorizing a finding that the party so charged was guilty of contempt, and that is the trial judge's conclusion, his judgment must be affirmed insofar as the sufficiency of the evidence is concerned. *Nylen v. Tidwell*, 141 Ga. App. 256, 233 S.E. 2d 245 (1977). Questions of contempt if committed in the actual presence of the court are for the court treated with contempt, and the trial court's adjudication of contempt will not be interfered with unless there is a flagrant abuse of discretion. *Crudup v. State*, 106 Ga. App. 833, 838, 129 S.E. 2d 183 (1962); S.C., 218 Ga. 819, 130 S.E.

2d 733 (1963); *cert. den.*, 375 U.S. 829, 84 S.Ct. 74, 11 L.Ed. 2d 61." *Id.*

See also *Young v. Champion*, 142 Ga. App. 687 (1977); *Spruell v. State*, 145 Ga. App. 720 (1978).

There is a narrow range of contempt cases where summary disposition is appropriate.

> "The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, or actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority before the public.' If some essential elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires, . . . that the accused be accorded notice and a fair hearing. . . ." *In re Oliver*, 333 U.S. 257, 275 (1948); *Cooke v. United States*, 267 U.S. 517 (1925). *See* also *United States v. Wilson*, 421 U.S. 309 (1975); F.R. Cr. Proc. Rule 42, 18 U.S.C.A.; 18 U.S.C.A., §401.

The Georgia Courts also recognize this narrow category of contempt cases.

> "There is a type of contempt of court which is exempt from the due process requirements of notice and hearing. This is the direct summary criminal contempt 'arising in the presence of the court which tends to scandalize it and hinder or obstruct the orderly processes of the administration of justice, the preservation of order and decorum in the court', . . . and which is committed 'in the face of' or 'in the immediate presence of' the judge. In such a case the court may 'act on its own knowledge of the facts and proceed to impose punishment for the contempt.' " *Moody v. State*, 131 Ga. App. 355, 358, 359 (1974); *Young v. Champion, supra.*

The respondent respectfully submits that since petitioner does not challenge the court's inherent power to summarily dispose of contempt occurring in its presence, the petition fails to raise an issue as to the standard of proof in such a proceeding. (Petitioner's brief, p. 17). Since petitioner was found in contempt of court for conduct occurring in the presence of the court, there is no issue as to the standard of proof applicable in such cases.

The Court of Appeals of Georgia, in the decision herein challenged, stated in part as follows:

> "Here attorney Farmer, being an officer of the court and fully cognizant of the foregoing rule, needed no warning to cease persisting in his arguments in view of the rulings of the trial court. He needed no further protection, for his client than an adequate record, which presumingly was made. Even if the trial judge were in error in some of his rulings, and we do not so hold, it was the duty of counsel to abide by those rulings; and if any right of his client was violated, the remedy was by appeal with which counsel is thoroughly familiar." *Farmer v. Holton, supra* at 108.

It cannot reasonably be said that the petitioner was not allowed sufficient opportunity to perfect the record for appellate review or that the court below erred in holding that petitioner's conduct constituted criminal contempt.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, KIRBY G. ATKINSON, attorney for the Respondent herein and a member of the bar of the Supreme Court of the United States, hereby certify that I have this day served a true and correct copy of the foregoing Brief for Respondent in Opposition upon the Petitioner's attorneys by depositing a copy of the same in the United States Mail, with proper address and adequate postage thereon to:

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This 23d day of February, 1979.

/s/ KIRBY G. ATKINSON
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